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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/751,233 | 01/02/2004 | Sean William Tucker | 10017979-2 | 1119 |

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EXAMINER

FLANDRO, RYAN M

ART UNIT

PAPER NUMBER

3679

DATE MAILED: 11/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | |
|------------------------------|----------------------------|----------------------|
| Office Action Summary | Application No. | Applicant(s) |
| | 10/751,233 | TUCKER, SEAN WILLIAM |
| | Examiner Ryan M Flandro | Art Unit 3679 |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 13 August 2004.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-8 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 02 January 2004 is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Priority

2. In view of Applicant's amendment submitted 8/13/04, the Examiner respectfully withdraws the prior objection to priority.

Claim Objections

3. Applicant's amendment has overcome the objection to claim 8 set forth in the prior Office action mailed 5/21/04.

Claim Rejections - 35 USC § 102

4. Claims 1-8 are rejected under 35 U.S.C. 102(b) as being anticipated by McIntyre (US 4,097,012).

- a. Claim 1. McIntyre shows and discloses a fastening system comprising a first mount bracket **30** rotatably attached to a first assembly **11,20**; a second mount bracket **30** (opposite side) rotatably attached to a second assembly **11,20,24**; and a perpendicular rigid attachment **A,B,R** joining said first mount bracket **30** with said second mount bracket **30** wherein said attachment **A,B,R** enables said first mount bracket **30** and said second mount bracket **30** to rotate together about a common axis and wherein said attachment **A,B,R** enables a portion of said first mount bracket **30** and a portion of said

second mount bracket 30 to be separated by space (see figure 1 and annotated figure 4 below).

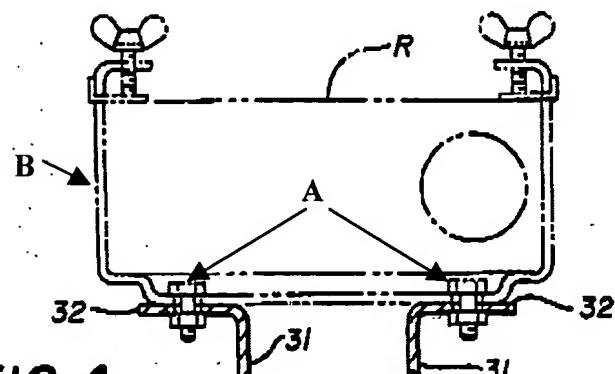
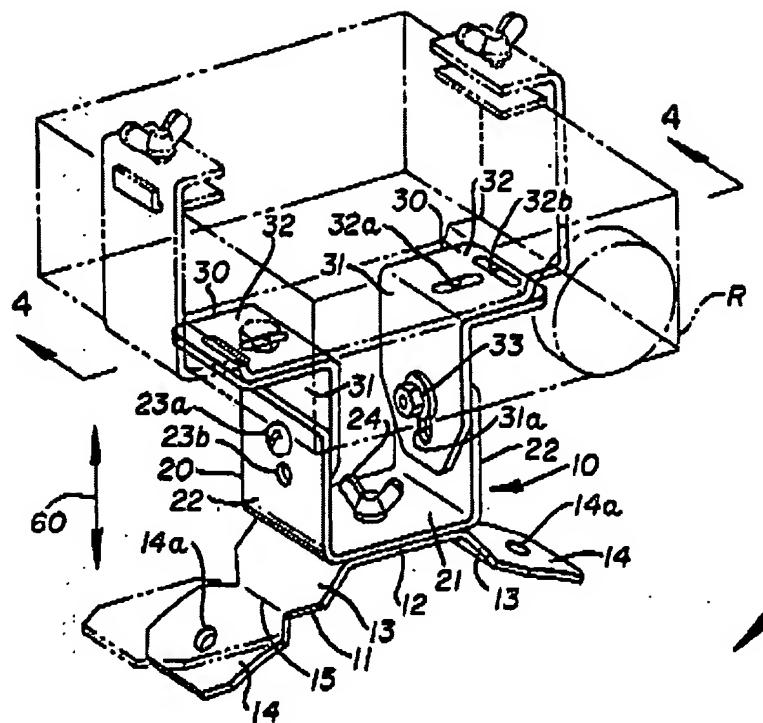


FIG. 4

- b. Claim 2. McIntyre further shows said first mount bracket 30 is attached to said first assembly 11,20 with an assembly screw 23a and an insert 33 (see figure 1 above).

- c. Claim 3. McIntyre further shows said insert **33** is a threaded insert and said assembly screw **23a** screws into said threaded insert **33** (see figure 1 above).
- d. Claim 4. McIntyre further shows said rigid attachment **A,B,R** between said first and second mount brackets **30** comprises a machine screw **A** (see annotated figure 4 above).
- e. Claim 5. McIntyre further shows said first mount bracket **30** further comprises at least one ear **32** for manual grasping and positioning of said fastening system (see figures above).
- f. Claim 6. McIntyre further shows said first and second mount brackets **30** each comprise a pair of "L" brackets, each of the "L" brackets having a first leg **32** and a second leg **31** and said rigid attachment **A,B,R** comprises fasteners **A** for removably joining together the first legs **32** of said "L" brackets, wherein the first legs **32** of said "L" brackets are separated by said space (see figures above).
- g. Claim 7. McIntyre further shows rotatable fasteners **23a** for rotatably fastening the second leg **31** of one of said "L" brackets **30** to a structure **22** and for rotatably fastening the second leg **31** of the other "L" bracket **30** to a support **20,11** (see figure 1 above).
- h. Claim 8. McIntyre further shows said second legs **31** of each pair of said "L" brackets **30** rotatably fastened to said structure **22** further comprises at least one ear **32** for manual positioning of said fastening system.

Double Patenting

5. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

6. Claims 1-8 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-5 of U.S. Patent No. 6,672,787. Although the conflicting claims are not identical, they are not patentably distinct from each other. First, each and every limitation recited in claims 1-5 of the instant application is clearly recited in claims 1-5 of the 787 patent. Specifically, the additional language in the last 6 lines of claim 1 is not patentably distinct from that set forth in instant claims 6-8. That is, the recitation of "L" brackets having first and second legs is not distinct from the '787 recitation of "first and second perpendicular arm portions". This double patenting rejection is maintained.

7. Applicant's arguments submitted 8/13/04 regarding the double patenting rejection of claims 1-8 in view of copending Application No. 10/751,094 are persuasive. The rejection is hereby withdrawn.

Response to Arguments

8. With respect to the anticipation rejection under McIntyre, Applicant's arguments filed 8/13/04 have been fully considered but they are not persuasive. McIntyre, as applied above, is believed to show and disclose elements "arranged as required by the claim" as required by MPEP §2131. Furthermore, the McIntyre device is disclosed and "shown in as complete detail as is contained in the . . . claim," as required by MPEP §2131. Specifically, with regard to Applicant's arguments that McIntyre does not show or disclose a first bracket rotatably mounted to first assembly and a second bracket rotatably mounted to a second assembly, the Examiner respectfully disagrees. As pointed out in the annotated rejection above, the first assembly is considered to be comprised of elements **11** and **20** only. The second assembly is considered to be comprised of elements **11, 20** and **24**. During patent examination, the pending claims must be "given their broadest reasonable interpretation consistent with the specification." See MPEP §2111, citing *In re Hyatt*, 211 F.3d 1367, 1372, 54 USPQ2d 1664, 1667 (Fed. Cir. 2000). Limitations from the specification are not read into the claims, however. In this case, nothing in the claims prevents an interpretation wherein several elements (e.g., **11,20** of McIntyre) of an assembly are considered "a first assembly" and the aforementioned several elements (**11,20**) plus another connected element (e.g. **24** of McIntyre) are considered a "second assembly". Accordingly, the rejection is maintained even in view of the amendment to claim 1 since the new language does not patentably distinguish over McIntyre.

Conclusion

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ryan M Flandro whose telephone number is (703) 305-6952. The examiner can normally be reached on 8:30am - 5:30pm Mon-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel Stodola can be reached on (703) 308-2686. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3679

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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10/25/04


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